



**Federal Communications Commission
Washington, D.C. 20554**

November 30, 2007

DA 07-4827

In Reply Refer to:

1800B3-BSH

Released: November 30, 2007

King Broadcasting Company, Inc.
c/o Erwin G. Krasnow, Esq.
Garvey Schubert Barer
1000 Potomac Street, N.W., Fifth Floor
Washington, DC 20007

Noalmark Broadcasting Corporation
c/o Anna Canterbury
Noalmark Broadcasting Corporation
202 West 19th Street
El Dorado, AR 71730

In re: KBIM(AM), Roswell, New Mexico
Facility ID Nos. 34871
File No. BAL-20070531APD

KBIM-FM, Roswell, New Mexico
Facility ID No. 34854
File No. BALH-20070531APE

Application for Assignment of Licenses

Dear Counsel:

This letter concerns the referenced application (the "Assignment Application") proposing to assign the licenses of Stations KBIM(AM) and KBIM-FM, Roswell, New Mexico (collectively, the "Stations") from King Broadcasting Company, Inc. ("King") to Noalmark Broadcasting Corporation ("Noalmark"). Noalmark requests waiver of the local radio ownership rule, Section 73.3555(a) of the Commission's Rules,¹ (the "Waiver Request") in connection with the acquisition of KBIM-FM.² For the reasons set forth below, we grant the Waiver Request and the Assignment Application.

Background. The community of license of the Stations, Roswell, New Mexico, in Chaves County, is not located within the geographic boundaries of any Arbitron-rated market. Noalmark currently holds a cognizable ownership interest in five radio stations licensed to various communities in adjacent Lea County, New Mexico: KIXN(FM), KPER(FM), KZOR(FM), Hobbs, New Mexico; KYKK(AM), Humble City, New Mexico; and KPZA-FM, Jal, New Mexico. On May 31, 2007, King and Noalmark filed the Assignment Application with a request for a waiver of the ownership limits applicable to Noalmark as they apply to its purchase and ownership of KBIM-FM.

¹ 47 C.F.R. § 73.3555(a).

² The proposed acquisition of KBIM(AM) is fully compliant with the local radio ownership rule.

Discussion. Section 310(d) of the Communications Act of 1934, as amended (the “Act”),³ requires the Commission to find that the public interest, convenience, and necessity would be served by the assignment of Stations KBIM(AM) and KBIM-FM’s radio broadcast licenses to Noalmark before the assignment may occur. A waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.⁴ Moreover, when the Commission waives a rule it must explain why the waiver would not undermine the policy served by the rule.⁵ As discussed below, we find that waiver is warranted and that grant of the Assignment Application would serve the public interest.

Multiple Ownership. None of the stations currently licensed to Noalmark, or proposed for assignment to Noalmark, is in an Arbitron Metro Survey Area. To determine whether a proposed transaction complies with the local radio ownership rule where the transaction involves a geographic area that is not defined by Arbitron, the Commission has explained that it will continue to apply its contour overlap methodology, with certain modifications, while it seeks comment on alternative methodologies for defining non-Arbitron markets.⁶ Under the interim contour overlap methodology, the relevant radio markets in this transaction are defined by the area encompassed by the mutually overlapping principal community contours of the stations proposed to be commonly owned by Noalmark. The number of stations in those markets is calculated by counting the stations to be commonly owned, as well as all full-power AM and FM stations located within 92 kilometers of the common overlap area whose principal community contours overlap any portion of the relevant contours.

Applying the interim contour overlap methodology, staff review confirms that the proposed transaction forms two separate radio markets A and B, where contour overlap occurs. In Market A, Noalmark would be in compliance with the numerical limits of the local radio ownership rule. In Market A, Noalmark would own one FM station—KBIM-FM, and one AM station—KBIM(AM). Staff analysis establishes that there are at least 23 radio stations in this market. Under Section 73.3555(a)(1)(iii), in a radio market with between 15 and 29 full-power, commercial and noncommercial radio stations, a person or single entity may have a cognizable interest in licenses for AM or FM radio broadcast stations for not more than six commercial stations in total, and not more than four commercial stations in the same service (AM or FM). Accordingly, within Market A, Noalmark’s post-transaction ownership is fully compliant with the station limits permitted under Section 73.3555(a)(1)(iii).

³ 47 U.S.C. § 310(d).

⁴ See *Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. F.C.C.*, 418 F. 2d 1153, 1157-59 (D.C. Cir. 1969) (“*WAIT Radio*”)). See also 47 C.F.R. § 1.3 (stating that rule provisions may be waived “for good cause shown”) and 47 C.F.R. § 73.3566(a) (providing that requests for waiver “shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof”). The Commission declined to adopt any specific waiver criteria relating to radio station ownership in the *2002 Biennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620 (2003) (“*Ownership Report and Order*”), but stated that “[p]arties who believe that the particular facts of their case warrant a waiver of the local radio ownership rule may seek a waiver under the general ‘good cause’ waiver standard in our rules.” *Ownership Report and Order*, 18 FCC Rcd at 13746-47 (citing 47 C.F.R. § 1.3).

⁵ See *WAIT Radio*, 418 F.2d at 1157.

⁶ See *Ownership Report and Order*, 18 FCC Rcd at 13870-73.

Waiver Request. In Market B, the area of principal community contour overlap of all currently owned Noalmark stations results in an existing market of four FM stations and one AM station. The proposed acquisition of KBIM-FM will add a small amount of principal community contour overlap to the common overlap area of the existing Noalmark stations. Thus, in Market B, if the proposed waiver and assignment are granted, Noalmark would own five FM stations—KIXN(FM), KPER(FM), KPZA-FM, KZOR(FM) and KBIM-FM, and one AM station—KYKK(AM). Staff review confirms that there are at least 26 stations in this market. In a local radio market with between 15 and 29 stations, a single owner may own up to six commercial stations, no more than four of which may be in the same service.⁷ Accordingly, the Assignment Application is grantable only if we waive application of Section 73.3555(a) in this market.

In support of its Waiver Request, Noalmark explains that the common overlap area “proposed to be created by the acquisition of KBIM-FM effectively has no listeners, as it consists of an area of 20 square kilometers with a population of *one*, according to the 2000 U.S. Census.” (emphasis in original).⁸ Moreover, Noalmark states, “the land in question is quite desolate, a home to oil wells.”⁹ Noalmark further argues that the prohibited overlap area KBIM-FM creates in Market B is extremely small relative to the total coverage of KBIM-FM.

Noalmark also cites Commission precedent that supports a grant of the Waiver Request. Noalmark cites *Hilo Broadcasting, LLC*, where the Commission concluded that waiver of the local radio ownership rule was appropriate where noncompliant ownership clusters were created by contour overlaps that occurred over the Pacific Ocean.¹⁰ In that case, the Commission found that deviation from the rule did not raise competition concerns.

We find that these considerations apply equally to the proposed transaction. The characteristics of the prohibited overlap area created in Market B, particularly its absence of daily listeners in that small common contour overlap area, constitute special circumstances warranting departure from Section 73.3555(a)’s application. The ultimate objective of the Commission’s numerical limits in the local radio ownership rule is to protect competition in local radio markets, thus “assuring that numerous rivals are contending for the attention of listeners.”¹¹ Significantly, the Commission further observed that “radio stations serve people, not land.”¹² In this instance, where there are effectively no listeners in the common overlap area, deviation from the rule does not undermine the local radio ownership rule’s policy objectives. Accordingly, we conclude that waiver of Section 73.3555(a) would serve the public interest.

Conclusion. Based on our review of the record and for the reasons set forth above, we find that Noalmark is qualified as the assignee and that grant of the transaction is consistent with the public interest, convenience, and necessity. Accordingly, IT IS ORDERED, that Noalmark’s Waiver Request IS

⁷ 47 C.F.R. § 73.3555(a)(1)(iii).

⁸ See Waiver Request at 3.

⁹ *Id.*

¹⁰ See *Hilo Broadcasting, L.L.C.*, Letter, 20 FCC Rcd 13582, 13585-6 (MB 2005).

¹¹ *Ownership Report and Order*, 18 FCC Rcd at 13716.

¹² *Id.* at 13724.

GRANTED and that the application for assignment of licenses of Station KBIM(AM), Roswell, New Mexico (File No. BAL-20070531APD) and Station KBIM-FM, Roswell, New Mexico (File No. BALH-20070531APE) from King Broadcasting Company, Inc. to Noalmark Broadcasting Corporation IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau